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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,969	06/23/2003	N. Douglas Owens	MOD-065-01	8819

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EXAMINER


JACKSON, ANDRE L

ART UNIT PAPER NUMBER

3677

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	<b>Office Action Summary</b>		<b>Application No.</b>	<b>Applicant(s)</b>
			10/601,969	OWENS, N. DOUGLAS
	<b>Examiner</b>	<b>Art Unit</b>		
		Andre' L. Jackson	3677	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,172,423 to Monne. Monne (Figs. 1-3) discloses a vehicle track system for use with a bearing load system having multiple load bearing systems supported by and movable along an overhead track (7) having intersections, the vehicle track system comprising:

a vehicle track plate body (5); a hanging device (2) attached to the vehicle track body engageable to the load bearing system via an eyelet coupling (17); a four wheel assembly (4) rotatably supported by the vehicle track body and engageable and movable within the overhead track; and at least two auxiliary wheels (20) engageable and moveable within the overhead track, at least one of the auxiliary wheels being dimensioned smaller than any of the four vehicle track wheel assemblies, the at least two auxiliary wheels being constructed to the vehicle track body via spacer plates (18) and positioned on opposite sides and opposite ends of the vehicle track body (Figs. 1-3).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art figures 1-4. Applicant's admitted prior art disclose a trolley (100) for use in a movable wall panel system (4) having multiple wall panels (2) supported by and movable along an overhead track (5) having X-intersections (7), the trolley comprising: a trolley body; a hanging device (63) attached to the trolley body engageable to the movable wall panel; four trolley wheel assemblies (102) rotatably supported by the trolley body and engageable and movable within the overhead track; and at least two auxiliary wheels (101) engageable and moveable within the overhead track, the at least two auxiliary wheels being constructed to the trolley body and positioned on opposite sides and opposite ends of the trolley body. However, applicant's prior art is silent on the dimension of the auxiliary wheels relative to the four trolley wheel assemblies. It is well known within the art and would have been an obvious matter of design choice to form the auxiliary wheels of dimensions smaller than the four trolley wheel assembly, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Further, applicant does not state that a smaller dimension in the auxiliary wheels solves any relevant problem or is for a particular purpose, the admitted prior art auxiliary operates equally as well.

As to claim 5, wedged-shaped spacer plates (Fig. 1B) attach the auxiliary wheels to the trolley body.

### **Response to Applicant's Arguments**

Applicant's arguments filed in the Amendment of January 10, 2005 have been fully considered but they are not persuasive. Applicant's remarks presented on page 6 and 7 state that the prior art relied upon by the Examiner (#4,172,423 to Monne) does not disclose or suggest all the limitations as presently presented by applicant. In particular, Monne fails to disclose at least two auxiliary wheels engageable and moveable within the overhead track as now claimed. In response to this argument that Monne does not disclose or suggest two auxiliary wheels "engageable and moveable within the overhead track", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Therefore, since Monne includes structure (two auxiliary wheels) and there being no structural difference between the structure of Monne and applicant's structure (two auxiliary wheels) and the two auxiliary wheels of Monne are capable of performing the intended use, then the limitations of applicant's claims are met. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Moreover, even if applicant's claims positively recited that the two wheels engage and move within the track, by way of applicant's amendment to the claims, the Examiner may change the grounds of rejection and interpret structural components of Monne differently.

For example, Monne further discloses rollers or wheels (9) shown in Fig. 2 moving in and engaging spaced ends of the track. As seen in Fig. 2, these wheels are dimensioned smaller than the four main trolley wheels and disposed at opposite ends and sides of the trolley body.

Therefore, for the foregoing reasons explained above, the Examiner believes applicant's claims as presently presented are not patentable over Monne and are obvious over applicant's admitted prior art. Consequently, claims 1-20 are found to be unpatentable over the prior art of record.

### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276. The examiner can normally be reached on Mon. - Fri. (10 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALJ

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PRIMARY EXAMINER